RECORDING REQUESTED BY:

Lennar Mare Island, LLC 690 Walnut Avenue, Suite 100 Vallejo, California 94592

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control Region 1 8800 Cal Center Drive Sacramento, California 95826 Attention: Mr. Anthony J. Landis, Chief Office of Military Facilities Recorded in Official Records, Solano County Doc#: 200600039655 3/31/2006 8:00 AM

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Transformer Pad Near Building 1322

Investigation Area D1, Former Mare Island Naval Shipyard
Eastern Early Transfer Parcel
Vallejo, California

This Covenant and Agreement ("Covenant") is made by and between Lennar Mare Island, LLC ("Covenantor"), the current owner of property to be restricted herein, situated on the Former Mare Island Naval Shipyard in Vallejo, County of Solano, State of California, and the California Department of Toxic Substances Control (the "Department"). Pursuant to California Civil Code Section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials, as defined in California Health & Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties," hereby agree pursuant to Civil Code section 1471 and H&SC section 25355.5 that the use of the Property be restricted as set forth in this Covenant. The Parties further intend that the provisions of this Covenant also be for the benefit of, and enforceable by, the U.S. Environmental Protection Agency ("U.S. EPA") as a third party beneficiary.

ARTICLE I – STATEMENT OF FACTS

- Island, and comprises a portion of the area generally known as the Eastern Early Transfer Parcel of Mare Island ("EETP"), in the County of Solano, State of California. The general location of Building 1322 is depicted in Exhibits "A1" and "A2", attached hereto and incorporated herein by this reference. The Building 1322 AL#01 polychlorinated biphenyl ("PCB") site includes a concrete pad with one active transformer and adjacent soils south of Building 1322. The concrete transformer pad within the Building 1322 AL#01 PCB site is subject to this Covenant, and is more particularly described and depicted in Exhibits "B" and "C" (the "Property"), attached hereto and incorporated herein by this reference.
- 1.02 On March 26, 2002 the ownership of the EETP, which included the Property, was transferred from the United States Department of the Navy ("Navy") to the City of Vallejo ("City"), and then immediately to Covenantor.
- 1.03 The EETP was previously part of the Navy's Mare Island Naval Shipyard. In April 2002, the Navy and the Department entered into a Federal Facility Site Remediation Agreement ("FFSRA"). Under the FFSRA for the EETP, the Navy retains its obligations under federal and state laws concerning the remediation of hazardous substances on the Property due to the activities of the Navy.
- 1.04 The Covenantor, the Department, and the City entered into a Consent Agreement on April 16, 2001 ("Consent Agreement"), whereby the Covenantor is obligated to perform remedial actions, achieve regulatory closure, and comply with operation and maintenance requirements such as the requirements of this Covenant, on the Property. The Consent Agreement is on file with the Department and the Covenantor. The Consent Agreement subdivides the EETP into eight (8) Investigation Areas. The Property is located within one of these Investigation Areas—Investigation Area D1. The Final Remedial Action Plan for Investigation Area D1 was approved by the Department on May 27, 2004, and provides that a deed restriction be required as part of the site remediation at the Property.
- 1.05 The Department has the authority pursuant to Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") section 120, and the H&SC chapter 6.5 and 6.8 to regulate PCBs.
- 1.06 The Toxic Substances Control Act ("TSCA") Complaint/
 Consent Agreement and Final Order for the Former Mare Island Naval Shipyard
 ("CA/FO") establishes U.S. EPA regulatory closure requirements for PCBs on the
 EETP. The Navy is the Respondent in the CA/FO, which settles allegations made by
 EPA that the Navy had been in violation of Section 15 of TSCA since 1996 by failing
 to comply with the PCB disposal requirements of 40 Code of Federal Regulations
 ("C.F.R.") section 761.61(a) and (c) on Former Mare Island Naval Station. The
 Covenantor is an "Intervenor" in the CA/FO because under the terms of the Consent
 Agreement and other EETP transfer documents, the Covenantor has assumed certain

responsibilities for, among other things, TSCA compliance and regulatory closure on the EETP.

- 1.07 Following cleanup actions at the Building 1322 AL#01 PCB site, the maximum remaining PCB concentrations in concrete are 0.02 milligrams per kilogram ("mg/kg") on the exposed transformer pad; 4,600 mg/kg in concrete beneath the active transformer (this PCB contamination is encapsulated by active Transformer No. T-1985); 0.078 mg/kg in soil under the transformer pad; and 0.076 mg/kg in surface soil south of the excavation area adjacent to the transformer pad, as depicted in Exhibit "D", attached hereto and incorporated herein by this reference. Soils located within the Building 1322 AL#01 PCB site are suitable for unrestricted use and are not restricted by this Covenant.
- 1.08 The active transformer at the Property encapsulates PCBs in the concrete pad beneath it, thereby preventing exposure to the remaining PCB contamination in concrete. The interface between the transformer and the concrete pad was sealed by application of a gray epoxy-based mortar across the joint, all the way around the transformer and cabinets. The mortar was then covered with a white epoxy-polyamide sealer. The "Encapsulated Surface" is the area sealed beneath the active transformer (Transformer No. T-1985) on the Property, as depicted in Exhibit "E".
- 1.09 40 Code of Federal Regulations ("C.F.R.") section 761.30(p) establishes the requirements for the continued use of porous surfaces contaminated with spills of liquid PCBs for the remainder of their useful life. These requirements are satisfied at the Building 1322 AL#01 PCB site by sealing the Encapsulated Surface beneath the active transformer and satisfying the other requirements established in this Covenant. Removal of the concrete transformer pad contaminated with PCBs at the Property from its location or removal of the active transformer from current use on the concrete pad is prohibited except for removal for disposal in accordance with applicable requirements of 40 C.F.R. Part 761.
- 1.10 The Department and U.S. EPA have concluded that the Building 1322 AL#01 PCB site does not present an unacceptable risk to human health and the environment provided the Encapsulated Surface is marked and maintained for the remainder of its useful life and the following uses of the Property are prohibited: residences, hospitals, schools for persons under the age of 18, or day care centers.
- 1.11 Pursuant to Paragraph 6(a) of the CA/FO, no further action is needed with respect to PCB contamination at Building 1322 AL#01, provided the applicable requirements of this Covenant, and the other requirements established in this Covenant are satisfied.

ARTICLE II – DEFINITIONS

- 2.01 <u>Department</u>. "Department" means the State of California by and through the Department of Toxic Substances Control and includes its successor agencies, if any.
- 2.02 <u>Owner</u>. "Owner" means the Covenantor and shall include the Covenantor's successors in interest, including heirs and assigns, during their ownership of all or any portion of the Property.
- 2.03 Occupant. "Occupant" means Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.
- 2.04 <u>U.S. EPA</u>. "U.S. EPA" means the United States Environmental Protection Agency, and includes its successor agencies, if any.
- 2.05 <u>Encapsulated Surface</u>. "Encapsulated Surface" means the area of the Property where human health and environmental risk has been abated by sealing in PCB contaminants under the active transformer.
- 2.06 <u>Bulk PCB Remediation Waste</u>. "Bulk PCB remediation waste" is defined by U.S. EPA in 40 C.F.R. Section 761.61(a)(5)(i), which states "Bulk PCB remediation waste includes, but is not limited to, the following non-liquid PCB remediation waste: soil, sediments, dredged materials, muds, PCB sewage sludge, and industrial sludge."

ARTICLE III – GENERAL PROVISIONS

- 3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC Section 25355.5 (a)(1)(C), Civil Code section 1471, and California Code of Regulations, title 22, section 67391.1; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by the Department, and U.S. EPA as a third party beneficiary and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.
- 3.02 <u>Binding Upon Owners, Occupants and Lessees</u>. Pursuant to H&SC section 25355.5 (a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignee, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department, and U.S. EPA as a third party beneficiary.

- 3.03 <u>Written Notification of the Presence of Hazardous Substances.</u> Prior to the sale, lease, or sublease of the Property, or any portion thereof, the Owner, Occupant, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.
- 3.04 <u>Incorporation into Deeds and Leases</u>. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases entered into for any portion of the Property on or after the date of recordation of this Covenant.
- 3.05 <u>Conveyance of Property</u>. The Owner shall provide notice to the Department and U.S. EPA not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.
- 3.06 Costs of Administering the Covenant. The terms of this Covenant run with the land and will continue in perpetuity unless a variance or termination is granted pursuant to Article VI herein. The Department has incurred and will in the future incur costs associated with the administration of this Covenant. Pursuant to the California Code of Regulations, title 22, section 67391.1(h), the Department's costs associated with the administration of this Covenant will be paid.

ARTICLE IV – ENVIRONMENTAL RESTRICTIONS

- 4.01 <u>Prohibited Uses</u>. The Property shall not be used for any of the following purposes:
- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as a residential habitation.
 - (b) A hospital for humans.
 - (c) A public or private school for persons under 18 years.
 - (d) A day care center for children.
 - 4.02 <u>Management of Property</u>.
- (a) No activities at the Property that will disturb the Encapsulated Surface (e.g., result in any movement of the active transformer, or damage or disturb the epoxy seal between the transformer and the concrete pad) shall be allowed without implementation of a Management Plan and a Health and Safety Plan, to be submitted with written notice at least thirty (30) days prior to planned activities to U.S. EPA and the Department for review and approval by the Department prior to implementation.

- (b) If the currently active transformer is replaced, removed or its use discontinued ("equipment change") for more than sixty (60) days, an evaluation shall be submitted to and approved by the Department and U.S. EPA, prior to the equipment change, that considers the feasibility of remediating the remaining PCBs.
- (c) The Owner shall provide U.S. EPA and DTSC with written notice at least fourteen (14) days prior to any change in use of the Property. If the use of the Property changes, in a manner that will increase the risk of exposure to PCBs, an evaluation of the feasibility of implementing remedial measures that at least reduce such increased exposure risks from PCBs on the Property shall be submitted to and approved by the Department and U.S. EPA prior to changing the use of the Property. In the event that the Property is to be demolished, additional measures for construction worker protection, and disposal of bulk PCB remediation waste will be required pursuant to 40 C.F.R. part 761. Any remediation of PCBs on the Property or management of PCB waste shall be pursuant to applicable state and federal laws.
 - 4.03 Non-Interference with Encapsulated Surface.

Covenantor agrees:

- (a) All uses and development of the Property shall preserve the integrity of the Encapsulated Surface.
- (b) The Encapsulated Surface shall not be altered without written approval by the Department and U.S. EPA.
- (c) Covenantor shall keep a record of each of the following: (i) the type, cause, location and date of any damage to the Encapsulated Surface and (ii) the type and date of repair of such damage.
 - 4.04 <u>Inspection and Maintenance of Encapsulated Surface</u>. The epoxy seal between the active transformer and the concrete pad shall be inspected at least once each calendar year to evaluate wear. The Owner shall conduct such inspections, and shall continue to maintain the epoxy seal, and the Encapsulated Surface, by reapplication of the epoxy-based mortar across the joint and/or epoxy-polyamide sealer, as necessary. Results of each such inspection shall be documented in writing and remain on site, stored by the property owner, available for Department and U.S. EPA review for a period of at least five years following the date of each inspection.
 - 4.05 <u>Physical Marker on Property</u>. The Owner agrees to erect, within thirty (30) days of recording this Covenant, a physical marker on the Property which gives notice of the presence of PCBs located on the Property. The Owner further agrees to replace this physical marker if it becomes worn or illegible. This physical marker shall be in the form of the M_L Mark described in 40 C.F.R. section 761.45(a).

- 4.06 <u>Access</u>. The Department and U.S. EPA shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department and/or U.S. EPA to protect public health or safety or the environment.
- 4.07 <u>Inspection and Reporting</u>. The Owner of the Property shall perform an annual inspection to verify that the use of the Property is in compliance with the provisions of this Covenant. Based on the annual inspection, a report shall be developed and submitted to the Department, U.S. EPA, and the City of Vallejo documenting the findings of the annual inspection. The first report shall be submitted to the Department, U.S. EPA, and the City of Vallejo one year following the date of recordation of this Covenant and shall be submitted to the Department, U.S. EPA, and the City of Vallejo annually thereafter. The report shall describe the monitoring and inspection of the Property for compliance with this Covenant, state the deficiencies and measures taken and necessary to address these deficiencies.
- 4.09 <u>Notification to the Department and U.S. EPA</u>. The Owner shall notify the Department and U.S. EPA within 3 business days of discovery of any activity that violates or is inconsistent with the provisions of this Covenant. The notification shall include any corrective measures taken or planned to address the violation or inconsistency. The Owner shall notify the Department and U.S. EPA within 3 business days of discovery of a previously unknown hazardous substances release to the environment, and in all cases the Owner shall comply with applicable notification requirements under state and federal law. The notification shall include a description of any interim containment or corrective measures taken or planned.

ARTICLE V – ENFORCEMENT

5.01 <u>Enforcement</u>. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department and/or U.S. EPA to obtain injunctive relief prohibiting commencement or continuation of any uses or activities restricted by this Covenant. U.S. EPA shall be entitled to enforce the provisions of this Covenant as a third party beneficiary. Violation of this Covenant shall be grounds for the Department or U.S. EPA to seek or file enforcement actions as provided by law.

ARTICLE VI - VARIANCE, TERMINATION, AND TERM

6.01 <u>Variance</u>. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. No variance may be granted under this paragraph 6.01 without prior notice and opportunity to comment by U.S. EPA. Any approved variance shall be recorded in the Office of the Recorder of Solano County, California, by the person or entity granted the variance.

- 6.02 <u>Termination</u>. The Owner, or with the Owner's consent, any lessee, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC Section 25234 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. No termination may be granted under this paragraph 6.02 without prior notice to and opportunity to comment by U.S. EPA. Any termination shall be recorded in the Office of the Recorder of Solano County, California, by the person or entity granted the termination.
- 6.03 <u>Term.</u> Unless ended or modified in accordance with the paragraphs above, by law, or by the Department in the exercise of its discretion, after providing notice to and opportunity to comment by U.S. EPA, this Covenant shall continue in effect in perpetuity.

ARTICLE VII – MISCELLANEOUS

- 7.01 <u>No Dedication or Taking Intended</u>. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever. Further, nothing set forth in this Covenant shall be construed to effect a taking under federal or state law.
- 7.02 <u>Department References</u>. All references to the Department include successor agencies/departments or any other successor entity.
- 7.03 <u>Recordation</u>. The Covenantor shall record this Covenant, with Exhibits "A1", "A2", "B", "C", "D" and "E", in the County of Solano within ten (10) days of the Covenantor's receipt of a fully executed original.
- 7.04 Notices. Whenever any person gives or serves any notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested as follows:

To Owner:

Ms. Sheila Roebuck Lennar Mare Island, LLC 690 Walnut Avenue, Suite 100 Vallejo, California 94592

To Department:

Department of Toxic Substances Control Region 1 8800 Cal Center Drive Sacramento, California 95826 Attention: Mr. Anthony J. Landis, Chief Office of Military Facilities

To EPA:

U.S. EPA Region IX
75 Hawthorne Street
San Francisco, California 94105
Attention: PCB Coordinator (CMD-4-2)

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

- 7.05 <u>Partial Invalidity</u>. If any portion of the Restrictions or any other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included.
- 7.06 <u>Exhibits</u>. All exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference.
- 7.07 <u>Section Headings</u>. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.
- 7.08 Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.
- 7.09 <u>Statutory References</u>. All statutory references include successor provisions.
 - 7.10 <u>Counterparts</u>. This Covenant may be executed in counterparts.

IN WITNESS WHEREOF, the Parties execute this Covenant.

By:
STATE OF CALIFORNIA)
COUNTY OF <u>San Francisco</u>)
On this
CHONTA BURGESS Commission # 1544620 Notary Public - Colifornia Contra Costa County My Comm. Expires Jon 15, 2001

Notary Seal Declaration

Pursuant to Govt. Code 27361.7, I certify under penalty of perjury that the notary seal on the document to which this declaration is attached reads as follows:

Name of Notary: Chonta Burgess

Commission Number: 1544620

Place of Execution: Contra Costa County

Date Commission Expires: Jan 15, 2009

Date: 3/29/04

First American Titl

THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Sacramento County
My Comm. Expires Dec 9, 2009

Date: 3/27/06
state of California) county of <u>Sacramento</u>)
On this 20th day of <u>March</u> , in the year 2006, before me Authory J. Landis, personally appeared anthony J. Landis, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s)-acted, executed the instrument.
WITNESS my hand and official seal. KATHLEEN C. DUNCAN Commission # 1628225

Signature Lathleen C. Duncan

Notary Seal Declaration

Pursuant to Govt. Code 27361.7, I certify under penalty of perjury that the notary seal on the document to which this declaration is attached reads as follows:

Name of Notary: Kathleen C. Duncan

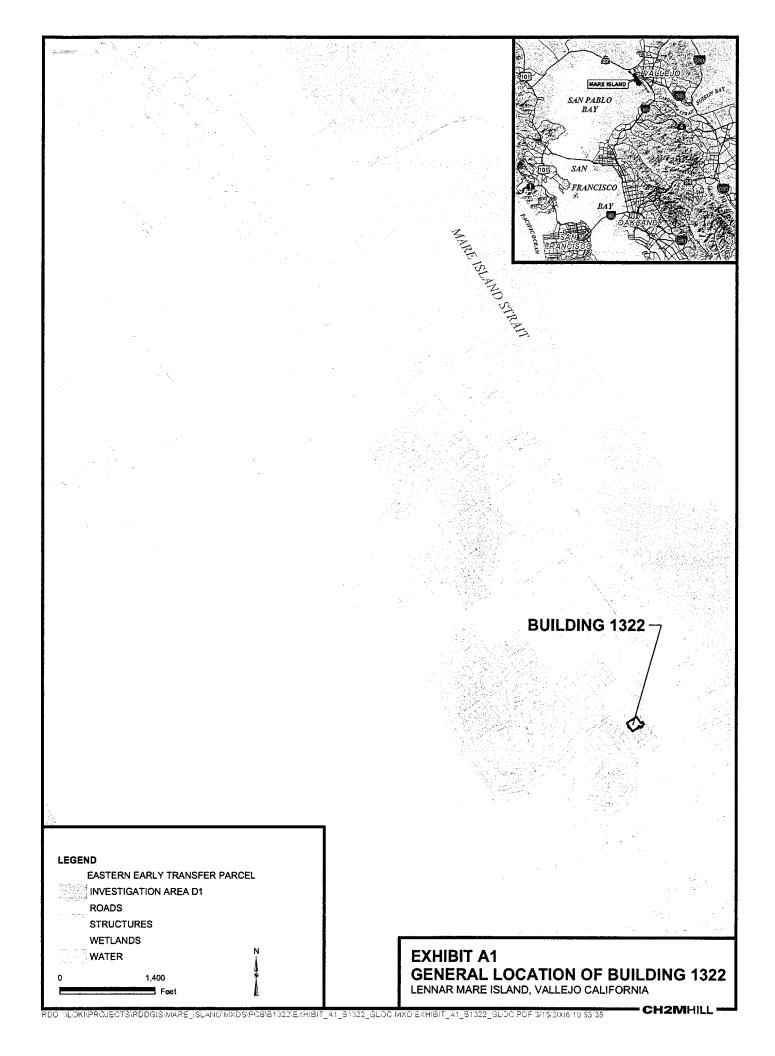
Commission Number: 1628225

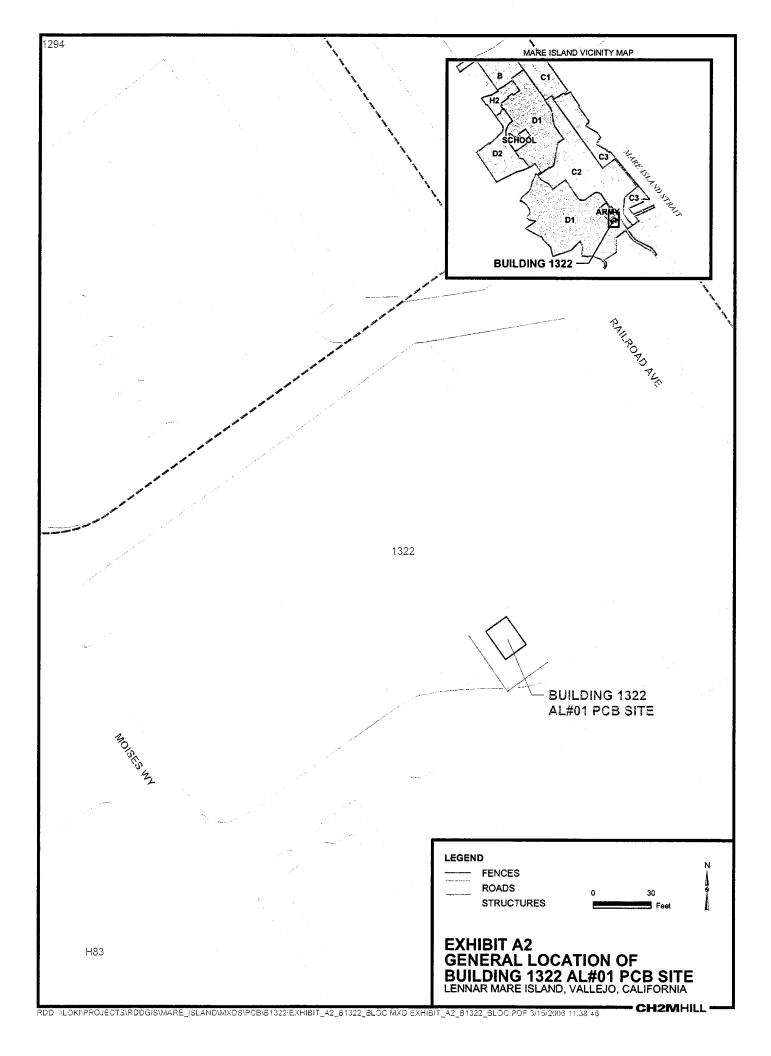
Place of Execution: Sacramento County

Date Commission Expires: Dec. 9, 2009

Date: 3/29/06

First American Title





Lennar Mare Island, LLC A portion of A.P.N. 066-010-001 Building 1322 AL#01, Environmental Restriction Area

Exhibit B Legal Description

All that real property situate on the lands commonly known as Mare Island Naval Shipyard, in the City of Vallejo, County of Solano, State of California, described as follows:

Being a portion of the "Primary Eastern Early Transfer Parcel", described as "Parcel No. 1" in the Grant Deed to Lennar Mare Island, LLC, a California limited liability company, which was recorded on March 26, 2002, Series No. 2002-37966, Solano County Official Records, more particularly described as follows:

Commencing at a 2-1/2" aluminum disk monument in a concrete curb, stamped "Mare Island Control Point 22, McGill-Martin-Self, Orinda CA", as shown on that certain Record of Survey filed November 14, 1996, in Book 21 of Surveys at Page 94 of Official Records of Solano County. Having established grid coordinates of North 1,794,824.409 feet and East 6,485,592.711 feet, referenced to the California Coordinate System of 1983, Zone 2 as given in that particular report entitled, "Summary Report, Horizontal Control Network, Mare Island Naval Shipyard, Vallejo, California, MMS Job #1587, McGill Martin Self, Inc.";

thence, South 28°46'53" East, 987.28 feet to the most northerly corner of Building No. 1322 AL#01, a concrete pad, the POINT OF BEGINNING;

thence, along the northeasterly edge of said pad, South 34°27'40" East, 16.00 feet to the easterly corner of said pad;

thence, along the southeasterly edge of said pad, South 55°32'20" West, 12.00 feet to the southerly corner of said pad;

thence, along the southwesterly edge of said pad, North 34°27'40" West, 16.00 feet to the westerly corner of said pad;

thence, along the northwesterly edge of said pad, North 55°32'20" East, 12.00 feet to the POINT OF BEGINNING.

Containing an area of 0.004 acre, or 192 square feet, more or less, at ground level.

The Basis of Bearing for the above description is the California Coordinate System (1983), Zone 2. Distances shown are grid distances. To obtain ground distances multiply grid distances by 1.00006210.

The real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Date: April 11, 2005



